

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALFREDO HERNANDEZ,

Plaintiff,

v.

JEFF MACOMBER, et al.,

Defendants.

No. 2:22-cv-0964 SCR P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a former state prisoner proceeding pro se with a civil rights action under 42 U.S.C. §1983. On July 27, 2024, defendants filed a motion for summary judgment. (ECF No. 33.) In a notice filed September 11, defendants informed the court that they re-served plaintiff with the motion on that date. (ECF No. 36.) When plaintiff did not file a timely response to defendants' motion, the court gave plaintiff twenty-one days to file a response and an explanation why he was unable to file a timely response. (Oct. 31, 2024 Order; ECF No. 37.) Twenty-one days have passed and plaintiff has not filed a response to defendants' motion for summary judgment or any sort of response to the court's October 31 order.

In the October 31 order, this court warned plaintiff that if he failed to file a response to the summary judgment motion or failed to show good cause for his failure to file a timely response, this court would recommend this action be dismissed. (ECF No. 37 at 2.)

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1 Accordingly, the Clerk of the Court IS HEREBY ORDERED to randomly assign a district
2 judge to this case.

3 Further, IT IS RECOMMENDED that the motion for summary judgment (ECF No. 33) be
4 denied without prejudice and this case be dismissed without prejudice for failure to prosecute and
5 failure to follow court orders. Fed. R. Civ. P. 41; E.D. Cal. R. 110.

6 These findings and recommendations will be submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
8 after being served with these findings and recommendations, either party may file written
9 objections with the court. The document should be captioned "Objections to Magistrate Judge's
10 Findings and Recommendations." The parties are advised that failure to file objections within the
11 specified time may result in waiver of the right to appeal the district court's order. Martinez v.
12 Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 DATED: December 10, 2024

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16 SEAN C. RIORDAN
17 UNITED STATES MAGISTRATE JUDGE
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